

Civil Society Consultation on Treaty Body Strengthening, organized by the National Human Rights Commission of Korea and the Korea Foundation, in Seoul on 19 and 20 April 2011

Seoul Statement on Strengthening the UN Human Rights Treaty Body System

Introduction

In 2009, the United Nations High Commissioner for Human Rights, Ms Navanethem Pillay, appealed to States Parties to human rights treaties, Treaty Body members and other stakeholders, such as civil society organisations and National Human Rights Institutions (NHRIs), to reflect on proposals which would enable the Treaty Body system to be more coherent, coordinated and effective. This led to a series of consultations, each of which adopted an outcome statement, as well as to the Joint Response in November 2010 by 20 Non-Governmental Organisations (NGOs) to the Dublin Statement on the Process of Strengthening the United Nations Human Rights Treaty Body System.

On 19 and 20 April 2011, a meeting co-hosted by the National Human Rights Commission of Korea and the Korea Foundation brought together the following group of international and national NGOs:

Asia Center for Human Rights
Centre for Civil and Political Rights (CCPR)
Conectas Direitos Humanos
Human Rights Watch
Informal Sector Service Centre (INSEC)
International Disability Alliance (IDA)
International Rehabilitation Council for Torture Victims (IRCT)
International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific)
Japan Federation Bar Associations
Kazakhstan International Bureau for Human Rights and Rule of Law Monitoring
Korea Bar Association
NGO Group for the Convention on the Rights of the Child
Quaker United Nations Office (QUNO)
World Organisation Against Torture (OMCT)

Four treaty body members and representatives of OHCHR participated as observers to the meeting.

The NGOs present at the meeting adopted this Seoul Statement, which builds on the joint NGO response to the Dublin Statement and is open to endorsement by other NGOs who were not present at the meeting. It is hoped that this statement will also serve as a useful basis for discussion at the second Civil Society Consultation in this process, which is scheduled to take place in Pretoria, South Africa, on 20 and 21 June 2011.

1. Purpose of the exercise:

- a. Any consideration of reform and strengthening of the UN Human Rights Treaty Body System must keep in mind that the purpose is to improve States' compliance with their obligations under the Treaties to which they are party so as to improve the promotion and protection of human rights on the ground. All proposals should be judged on that basis.
- b. All efforts towards strengthening the Treaty Body system must be guided by the basic principles of human rights such as universality and non-discrimination, as well as non-regression, intersectionality and the principle and approach of substantive equality. Full participation and inclusion of NGOs representing diverse sectors of society must be guaranteed in all Treaty Body processes with particular recognition of the importance of contributions by local and national groups and movements.
- c. There are two elements to the UN Treaty Body system that must be better understood and maximised in order for appropriate reform and strengthening to take place: firstly, States reporting to Treaty Bodies, as well as monitoring by Treaty Bodies of States' implementation of the provisions of a treaty to which it is a party, are processes that are legal in nature. States voluntarily enter into legal obligations by becoming party to a treaty and the Treaty Bodies receive a legal mandate from their respective treaties to monitor State implementation of the provisions of that treaty; secondly, while State reporting is an important process and universally applied to all State parties to a treaty, the examination of reports received is only one of the activities carried out by Treaty Bodies. The importance of the other functions of the Treaty Bodies, and of the inter-relationship between these functions, must not be minimised nor overlooked in the reform discussions.

2. Independence and expertise of Treaty Body members

- a. The participants fully endorsed and supported paragraphs 19 and 20 of the Poznan Statement on the Reforms of the UN Human Rights Treaty Body System concerning the independence and expertise of Treaty Body members.

3. Ensuring full and inclusive participation of NGOs in all stages of the reporting process

- a. The participants considered that it is essential for the effective functioning of the Treaty Body system that NGOs and rights-holders from diverse sectors of society and representing local, national and international contexts, must have effective access to participate in all stages of a treaty reporting cycle in their capacity as primary stakeholders in the system of human rights protection. This access must be inclusive and facilitate participation by all NGOs and rights-holders, including those for whom access has often been particularly difficult. The participants welcomed recent initiatives by the OHCHR to make the work of the Treaty Bodies more accessible to rights-holders on the ground, including by creating

dedicated follow-up pages and initiatives to provide information on deadlines for upcoming Treaty Body sessions and lists of issues.

- b. The participants made a number of recommendations for further improving access by NGOs and rights-holders, including:
- i. *Recognition of NGOs as legitimate stakeholders:* NGOs from all sectors of society should have the opportunity to interact with the Treaty Bodies in official, private sessions with interpretation services. This would give recognition to NGOs as legitimate stakeholders and would facilitate the exchange and promote active participation by all Treaty Body members.
 - ii. *Acts of Reprisals:* These are a serious and real concern for many individuals engaging with the Treaty Bodies and need concerted consideration and action by States and Treaty Bodies alike. Without guaranteed safety for those who present alternative reports, participate in Treaty Body sessions, submit communications, or otherwise engage with the Treaty Bodies, the system loses its credibility and efforts at strengthening it will be inadequate. The participants welcomed recent measures taken by certain Treaty Bodies to draw attention to possible reprisals and encouraged other Treaty Bodies to follow suit and to work closely with the Special Procedures, the OHCHR and other relevant bodies and agencies to monitor and take action in cases where reprisals occur. The Joint Response by NGOs to the Dublin Statement contains specific recommendations in this regard.
 - iii. *Scheduling of consideration of State reports and NGO briefings:* Formal NGO briefings shall be held in close proximity to the corresponding consideration of a State Party report to limit financial barriers to participation in both. This should not preclude the organisation of additional briefings such as those taking place in pre-sessional working groups or other formats.
 - iv. *Access for persons with disabilities:* The OHCHR should ensure that all Treaty Bodies comply with relevant accessibility standards, including access to premises, information and means of communication, to facilitate the full participation by persons with disabilities in the work of the Treaty Bodies, whether these are Treaty Body members, representatives of States Parties, NHRIs or NGOs.
 - v. *Publication of Treaty Body deadlines:* The master calendar of deadlines related to Treaty Body sessions currently being developed by the OHCHR should include information on all steps in the reporting process at least two years in advance of the consideration of a State Party's report by a Treaty Body.
 - vi. *Video Conferencing:* To ensure that NGOs not physically present at the NGO briefings or pre-sessional working group meetings have an opportunity to provide oral briefings to the Treaty Bodies, video conferencing should be made available between NGOs in the country under review and Treaty Body members. UN field offices can play a key role in facilitating this form of interaction. Further, video

conferences with national and/or local NGOs and State representatives should be made part of any future expansion of the follow-up procedures.

- vii. *Webcast*: To ensure effective access for persons not physically present at the consideration of a State report, all public Treaty Body sessions should be webcast to ensure the widest possible accessibility, understanding and ownership of the process. Further, webcasts could enable the State representatives supporting the session from capital in real time, thus facilitating timely responses by States during the consideration of a report.

4. Consultation prior to State reporting

- a. The participants emphasised the importance of States undertaking an inclusive process of national consultations as part of the preparation of the State report, following the good example set out in the CRPD. This process could be led by a national coordination mechanism that facilitates the reporting cycle, including the preparation of a State Party's reports to all relevant Treaty Bodies. The process should comprise consultations with all relevant government ministries and other central, regional and/or local authorities, as well as the legislature, judiciary, national human rights institutions, NGOs and other rights-holders, including those often marginalised or excluded. State Parties have the main responsibility to prepare the State Party report. Treaty Bodies should systematically ask States during the consideration the State report about how this consultation process was undertaken and what steps were taken to ensure that the process was a fully inclusive one.

5. List of Issues Prior to Reporting (LoIPR)

- a. The participants considered that the LoIPR procedure currently used by the Committee Against Torture (CAT), the Human Rights Committee (HRCtte) and recently adopted by the Committee on Migrant Workers (CMW) has the potential to make State reports more focused through their specific requests for information from the State; to prompt timely reporting through the submission of a LoIPR; and to decrease the volume of written documentation without diminishing the depth and scope of the consideration of a State report. At this stage, the LoIPR procedure is too new to draw final conclusions on its impact and effectiveness. A preliminary assessment has highlighted concerns regarding access to information on future adoption of LoIPRs, scheduling of the different steps in the reporting process and how to address non-reporting States. Effective preparation of the LoIPR requires time for consultation with civil society; therefore, appropriate advanced notification and publicly available deadlines should be provided. Further in-depth assessment of the LoIPR procedure would be very useful before further development.

6. Consideration of a State Party Report

- a. The participants agreed that the consideration of a State Party report, which entails a face-to-face dialogue between a State Party and members of a given Treaty Body, is at the heart of the UN Treaty Body reporting

process. The participants agreed that the Treaty Bodies should share best practices about the conduct of the dialogue with State Parties. Furthermore, the participants considered that efforts should be made to manage time efficiently during the session meetings, which could be structured so that the sequence of topics addressed during the consideration of the State Report reflects the national situation and not necessarily the order of articles in the Treaty.

- b. To facilitate implementation and ensure greater access by national NGOs to the Treaty Body sessions, the participants agreed that some – though not all – Treaty Body sessions should be held outside Geneva and New York, in different regions. To facilitate the holding of Treaty Body sessions outside of Geneva and New York, the schedule could be rearranged with a regional focus as necessary and appropriate. A change in venue for the Treaty Body sessions should not involve a change in the frequency or modalities of the sessions. The participants welcomed the fact that a meeting of Treaty Body Chairpersons has already successfully taken place outside Geneva and New York.

7. Implementation and follow-up

- a. The participants asserted that it is important to distinguish between in-country implementation of the recommendations (activities at national level to give effect to treaty provisions), which is the responsibility of the State Party, and the formal follow-up and monitoring process conducted by Treaty Bodies.
- b. The participants made the following recommendations regarding In-Country Implementation of the Concluding Observations by the State Party:
 - i. The participants emphasised the importance of having specific and concrete Concluding Observations that could be more easily translated into a comprehensive plan of action and thus ensure their effective and full implementation. They encouraged the establishment of a national coordination mechanism that would coordinate the implementation of Concluding Observations from all Treaty Bodies as well as the recommendations of the UPR and other HRC mechanisms and strongly recommended that State Parties set up such a mechanism and ensure its close and inclusive cooperation with the widest possible range of NGOs and other stakeholders.
 - ii. The participants called for the full involvement in the implementation phase of all actors at the national level, including the government, parliamentary and judicial authorities, the NHRIs, the UN country offices, and, where they exist, the field offices of the OHCHR, as well as the media and NGOs from all sectors of society.
 - iii. The participants considered that UN agencies can and should play an important role in supporting a State-led process of implementation of Concluding Observations and recommendations at the national level.
 - iv. The participants recalled the responsibility of the States parties to translate the Concluding Observations into local languages and to

disseminate them widely. They acknowledged the crucial role that can be played by NGOs in this regard.

- v. The participants encouraged the expansion of the practice of some Treaty Bodies of holding regional workshops to facilitate effective implementation of State Treaty obligations and Concluding Observations.
- c. Regarding the Treaty Bodies Follow-up Procedure, the participants welcomed the time-bound follow-up procedure being carried out by some Treaty Bodies, as well as the recommendation set out at the 10th Inter-Committee Meeting to evaluate the functioning of the existing follow-up procedures. The participants made the following recommendations to further strengthen the follow-up procedure:
 - i. All Treaty Bodies should consider implementing a follow-up procedure taking account of the specificities of each treaty.
 - ii. The Country Rapporteur within a Treaty Body should be the lead person responsible for follow-up with their respective countries, in close coordination with the Follow-up Rapporteur where applicable.
 - iii. Where applicable, Follow-up Rapporteurs should be responsible for ensuring consistency in the evaluation of information from all States and conduct ongoing analyses of the functioning of the follow-up procedure with a view to continuously improving its functioning. Further, the Follow-up Rapporteurs should be responsible for promoting harmonisation of follow-up procedures between the Treaty Bodies.
 - iv. Evaluation of follow-up information provided by States must be based on objective criteria to ensure a consistent approach in relation to all States.
 - v. A system of regular reminders to States, as agreed by the Inter-Committee Meeting Working Group on Follow-up to Concluding Observations, Inquiries, Visits and Decisions in January 2011, should be put into practice.
 - vi. NGOs must be involved in the follow-up procedure on Concluding Observations, including, where relevant, by being allowed to intervene during Treaty Body meetings that are held to discuss follow-up reports. Involvement of NGOs must be inclusive and facilitate participation by all rights-holders, including those for whom access has often been particularly difficult.
 - d. Regarding follow-up to all Concluding Observations by Treaty Bodies, the participants made the following recommendations:
 - i. Periodic State reporting processes should include a focus on the implementation of the Concluding Observations previously adopted by the same Treaty Body. In this context, the Lists of Issues adopted for the consideration of a State report should refer to the previous Concluding Observations and States should systematically provide information on the measures taken for their implementation.
 - ii. Based on information from States and all other relevant Stakeholders, the Treaty Bodies should evaluate the degree of implementation of all

Concluding Observations based on objective criteria similar to those used to evaluate implementation of recommendations selected for time-bound follow-up.

- iii. Based on the evaluation by each Treaty Body of the implementation of the Concluding Observations, Treaty Bodies, with the support of OHCHR, should develop a comprehensive country-based breakdown of the degree of States' implementation of all Concluding Observations. Similar work could be carried out on thematic issues.
- iv. The participants agreed that the production of a Country Sheet would be extremely useful to ensure that adequate reference is made – and that a harmonised approach is taken – during the consideration of State's report by other Treaty Bodies and in the UPR process. This would also greatly assist NGOs in the implementation activities related to Concluding Observations and UPR Recommendations, as part of the on-going reporting cycle.

8. Non-Reporting States

- a. The participants agreed that the failure by some States to comply with their reporting obligations remains a major concern. Too many States have evaded Treaty Body scrutiny for too long, in some cases for more than a decade. Although in some specific instances a lack of capacity may contribute to a State Party's failure to submit a timely report, in many cases it denotes a lack of political will on the part of a State to fulfil its reporting obligations.
- b. The Treaty Bodies should develop and harmonise their procedure for the review held in the absence of a State report. It is suggested that, if necessary, one slot per session should be devoted to such a review. The selection of a country for review in the absence of a State report should be based on objective criteria, such as the amount of time by which a State's report is overdue, with priority being given to initial reports.
- c. The active participation of a broad range of civil society actors in a review in the absence of a State report is crucial. As such, adequate time must be given to NGOs and rights-holders, as well as other stakeholders such as UN agencies and NHRIs, to brief the Committee. The current practice of some Treaty Bodies of conducting reviews in the absence of a State report in closed (private) meetings encourages States not to cooperate with the Committee, since non-reporting States will benefit from the confidentiality of the procedure. Where a State is being reviewed in the absence of a State report, Treaty Bodies should conduct a public review to ensure transparency and effective public engagement with the process. Furthermore, Concluding Observations should be made publicly available shortly after the review.

9. General Comments

- a. The participants recalled the significance of General Comments in guiding States towards the effective implementation of their international obligations. Consequently, the participants encouraged Treaty Bodies to

adopt General Comments that are consistent with evolving human rights standards and to revise previously adopted General Comments accordingly. Furthermore, Treaty Bodies should adopt a systematic drafting procedure that takes into account comments provided by other Treaty Bodies and civil society actors, and that conducts a transparent decision-making process on the selection of topics of General Comments.

10. Individual Communications

- a. The participants recalled paragraph 21 of the joint NGO Response to the Dublin Statement regarding the under-use and lack of visibility of individual communications of some Treaty Bodies. They agreed that greater consideration and importance should be attributed to the individual communications procedures of the relevant Treaty Bodies. To this end, they also emphasised the need to ensure greater transparency and accessibility to this process, while remaining sensitive to the safety and security of the author and/or victim of such a communication.
- b. The participants emphasised that where relevant, recommendations that call for structural change, including in national legislation in order to bring it into line with the provisions of the relevant Treaty, should be made systematically so as to ensure as much as possible the non-repetition of similar violations in that same country.
- c. The participants considered that additional efforts should be made to improve the information provided on the follow-up to decisions/views taken on individual communications. As such, a separate webpage on the follow-up to individual complaints could be set up to facilitate the posting of public information including general information on the case, violations found, remedy recommended, further action taken and required, as it is currently presented in the interim and annual reports of the Treaty Bodies.
- d. The participants agreed that Treaty Bodies should consider conducting follow-up visits to a country, especially in cases where a State persists in failing to implement decisions taken on an individual communication. The participants further recommended that joint actions (letters, meetings, country visits) and increased coordination between the various Treaty Bodies should be developed with respect to States that have experienced particular difficulties with the implementation of the decisions.

The following NGOs co-drafted and endorse this Statement:

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